

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0302P**

**Withholding Tax  
For the Calendar Year 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

II. **Tax Administration** – Interest

**Authority:** IC 6-8.1-10-1

The taxpayer protests the interest assessment.

**STATEMENT OF FACTS**

The late penalty and interest were assessed on the late filing of a non-resident shareholder withholding for the calendar year 2002.

The taxpayer is a company located in Indianapolis.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be waived as the taxpayer has a good tax compliance history, and, the error was the result of the unintentional clerical mistake.

With regard to the tax compliance history, the taxpayer has had several tax calculation mistakes and late filings. The Department does not find the taxpayer has an exemplary tax compliance history.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was ignorant of listed tax laws. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.

#### **II. Tax Administration – Interest**

Interest may not be waived according to statute IC 6-8.1-10-1.

### **FINDING**

The taxpayer's protest is denied.